

Earthjustice

QUARTERLY MAGAZINE

Winter 2019

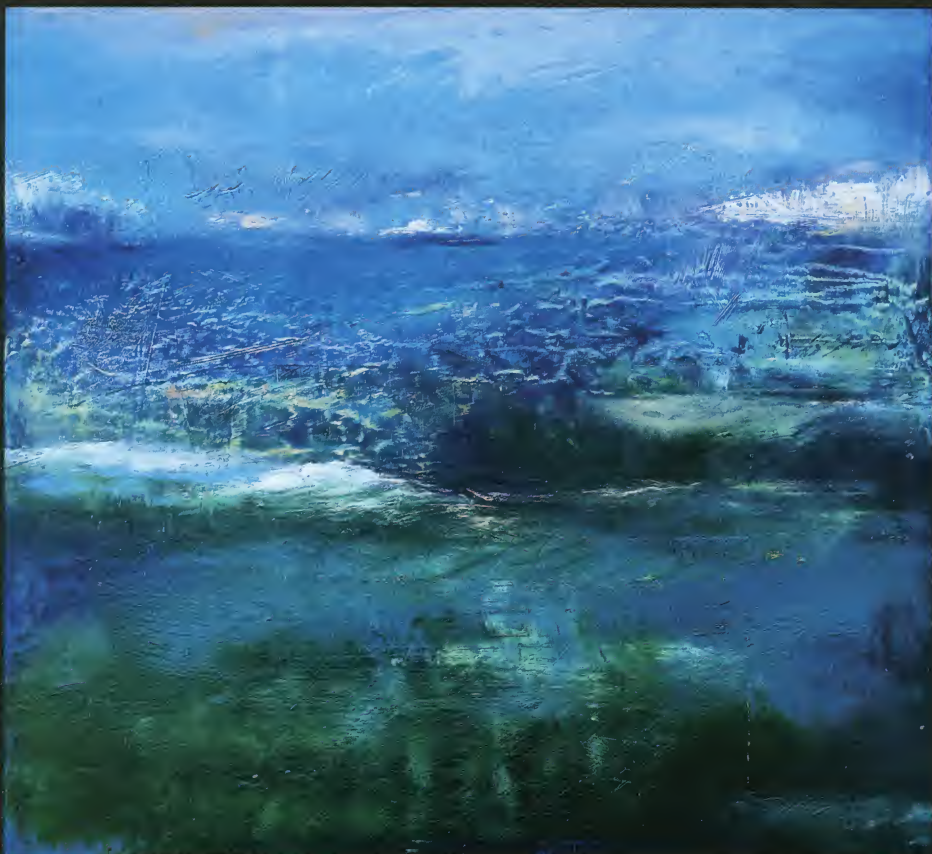
TO THE **HIGHEST COURT**



**THE FUTURE
IS FLORIDA**

**TRIUMPH FOR
TRIBAL LANDS**

FROM OUR SUPPORTERS



Growing up, Naomi Mindelzun loved exploring the woods and losing herself in nature. In her studio in Palo Alto, Calif., Mindelzun recreates that journey through colorful, abstract oil paintings of wildlife and landscapes. She is using her art to protect nature's beauty by donating part of her proceeds to Earthjustice. "Protecting our planet is the only thing that's important right now," she says. "It makes me proud to know my paintings can help a little bit in this impossible situation."



We love seeing our readers moved to art and action. Share with us at magazine@earthjustice.org, or by tagging **#earthjustice** on Instagram.



EARTHJUSTICE

Earthjustice is the premier nonprofit environmental law organization. We wield the power of law and the strength of partnership to protect people's health; to preserve magnificent places and wildlife; to advance clean energy; and to combat climate change. We exist because the earth needs a good lawyer.

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Small talk isn't what it used to be. The weather is divisive and scary. Politics are like the new sports – except divisive and scary. In the usual places, I find myself in unusual conversations. We choose our words differently, but we are edging around the same fear for the future.

On a recent fall afternoon in California, gorgeously sunny, unseasonably warm, watching our kids play soccer, a fellow parent asks me how the planet is doing. It's a friendly nod to my work at Earthjustice. And, on a day when wildfires are raging, when the power is out, it's a real question.

Another real question that comes up in otherwise casual moments: "Are you afraid?"

Yes, I am afraid!

But I also have a vantage point that gives me hope, because I work with our staff at Earthjustice, with all of our clients and allies, with our supporters, and with people around the world leading in this moment.

What we see in the news is the lawlessness of this administration. What we hear too little about is the massive pushback in the courts, the vindication of our laws, and the rule of law itself.

Earthjustice has never won so many lawsuits in one year. Among these victories are resounding wins enforcing the limits of executive power and vindicating the force of our bedrock environmental protections.

We have never stopped – in the space of a single year – so many well-funded, disastrous efforts to destroy

our web of life. We have never done more to counter the threats to the health and well-being of people living near polluters. We have never won more decisively, in more states, in more cities, the argument for clean, affordable energy as we race to achieve a just transition from fossil fuels.

Make no mistake. These are not the "easy," early wins that flow from basic failures to follow procedures. These are wins that reinforce our constitution and

all the laws we can apply to protect our planet. And these are victories that matter immediately.

In the Rosemont case, our victory stopped bulldozers from starting to dig a mile-wide open-pit copper mine on lands sacred to tribes in the Southwest (*page 32*). The ruling upholds protections under mining law that industry often flouts. And, we went all the

way to the Supreme Court (*page 14*) after winning twice in lower courts on a critical defense of the Clean Water Act.

Our laws give us unique agency to shape our future, and we are using and defending that power. We are so fortunate to have your support in the fight of our lives.

Hope and courage,

Abigail Dillen
President, Earthjustice

**OUR LAWS GIVE
US UNIQUE AGENCY
TO SHAPE OUR
FUTURE, AND
WE ARE USING
AND DEFENDING
THAT POWER.**



Hurricane Irma pounded Florida in 2017. The state is particularly vulnerable to changes in storm intensity, sea-level rise, and heat waves. *Chip Somodevilla / Getty Images*

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Earthjustice attorney David Henkin stands among the Supreme Court's pillars. He traveled there from Hawai'i to argue a clean water case with sweeping national implications.

Melissa Lyttle for Earthjustice

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ALASKA: TONGASS TREES SPARED

Nearly 1,200 acres of irreplaceable old-growth rainforest have been spared from chainsaws for the time being. In response to an Earthjustice lawsuit, a federal judge issued a preliminary injunction to stop the U.S. Forest Service from handing over ancient stands of trees in Alaska's Tongass National Forest to the timber industry. The judge's ruling applies to the initial sale in a 15-year Trump administration plan to log 43,000 acres and construct 164 miles of roads in a forest that serves as one of the country's most important carbon sinks, combatting climate change. As we've done for decades, Earthjustice will continue to fight to safeguard these incomparable public lands.

A recent Earthjustice court victory halted a timber sale on Prince of Wales Island in Alaska. *Melissa Farlow / National Geographic Creative*





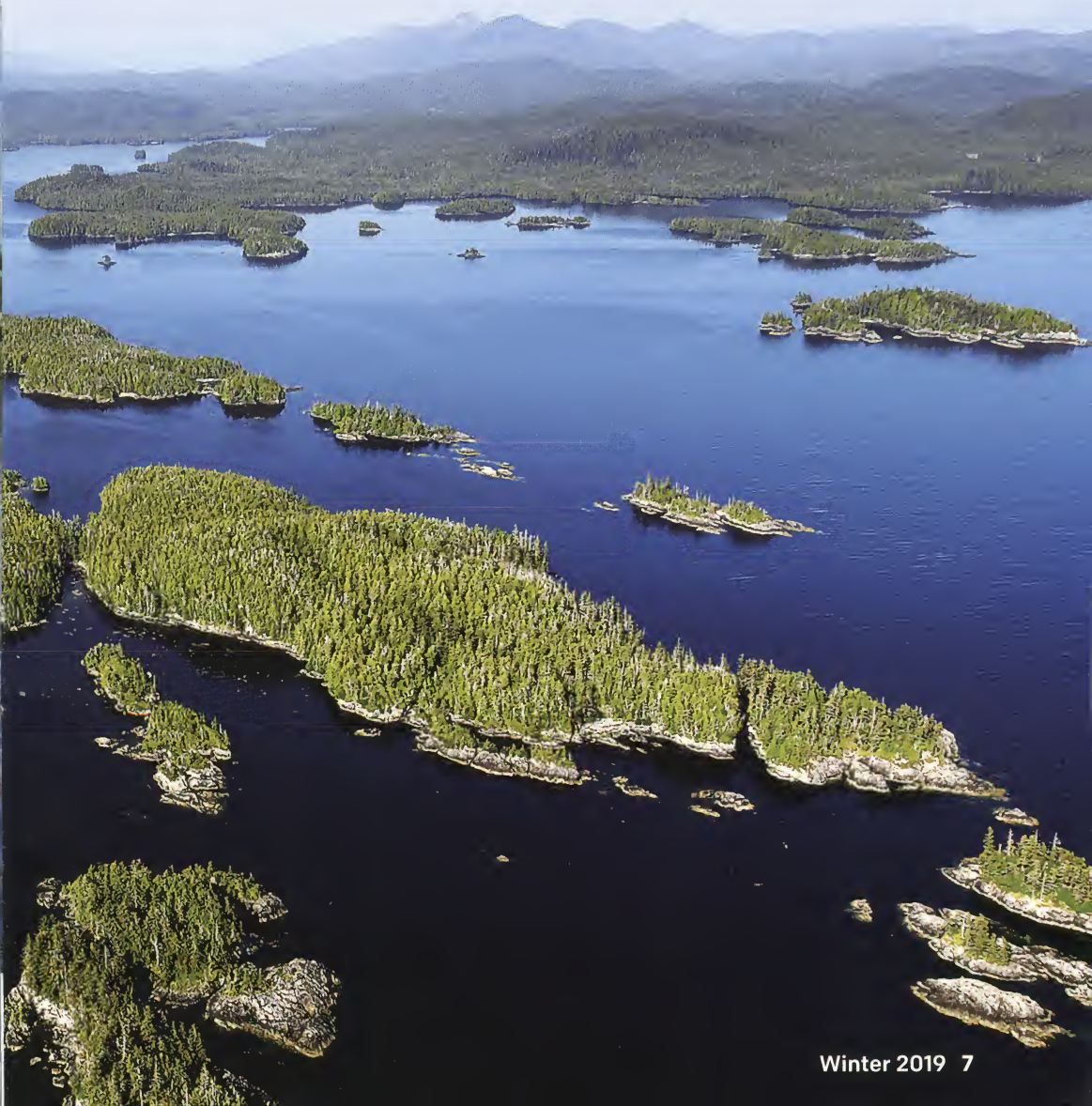
CALIFORNIA: HAZY LOGIC

The Trump administration has picked a fight with California over the state's strict emission standards for new cars. Earthjustice and others are going to court to ensure this is a fight the administration will lose. Fortunately, the law in this case is long established and sits squarely in Trump's way. The federal government wants to strip the authority of California and 13 other states to set their own restrictions on car pollution. At the same time, the Trump administration wants to relax federal tailpipe standards. If successful, these new rules could increase pollution for more than 100 million Americans.



NORTH DAKOTA: DAPL FIGHT RENEWED

The Standing Rock Sioux Tribe has advanced its legal battle against the Dakota Access Pipeline (DAPL). A spill from DAPL, a major crude oil pipeline that crosses the Tribe's ancestral lands, could be disastrous for the Tribe. The U.S. Army Corps of Engineers, which approved the pipeline, has failed to fully assess the risks of such a spill, even when ordered to do so by a federal judge in 2017. On behalf of the Tribe, Earthjustice recently asked that judge to throw out the Army Corp's latest sham risk assessment and shut down DAPL.





A judge has restored protections for the endangered North Atlantic right whale, of which only 400 are left.
NOAA NMFS Northeast Regional Office / CC BY 2.0



NATIONAL: A WHALE OF A VICTORY

The world's remaining 400 North Atlantic right whales – one of the most critically endangered species in our oceans – will again swim free in two large areas off the coast of New England. Last year, the Trump administration bowed to the fishing industry and opened these areas to dangerous gillnets that can trap and kill right whales and other wildlife without going through the legally required Endangered Species Act consultation process. Earthjustice and its Conservation Law Foundation partners immediately filed suit. Last month, the judge said there was no need to appear in court. Based on our briefs alone, the judge found that the Trump administration violated the law and issued an order once again prohibiting gillnets in the two areas.



NATIONAL: CUTTING CROSS-STATE SMOG

In a big win for public health, the D.C. Circuit Court of Appeals recently ruled that the EPA is illegally failing to control smog that travels across state lines. The decision, in response to an Earthjustice lawsuit, requires the agency to place tighter limits on industrial sources of air pollution. By doing so, it will prevent thousands of premature deaths and hundreds of thousands of cases of aggravated asthma. This ruling also sets an important precedent requiring the EPA to more promptly control cross-state pollution going forward.



SAN DIEGO GOES ELECTRIC



CALIFORNIA

San Diego is about to be a much easier place to charge an electric bus or truck. The California Public Utilities Commission approved a program to invest more than \$100 million in infrastructure and charging equipment for such vehicles, with at least 30% of the infrastructure funds reserved for disadvantaged communities. Earthjustice represented East Yard Communities for Environmental Justice and Center for Community Action and Environmental Justice, whose members live in communities of color and are exposed to toxic pollution from trucks and freight equipment, in advocating for the new program.

Safe Ag Safe Schools members protest inside the EPA building in Sacramento, California, during a hearing about chlorpyrifos in November 2018.

Martin do Nascimento / Earthjustice

DANGEROUS PESTICIDES OUTLAWED

California recently announced a ban on the use of 99% of all chlorpyrifos, a type of dangerous pesticide widely used on apples, oranges, broccoli, and dozens of other types of produce. Earthjustice fought for this ban because chlorpyrifos is harmful to pregnant women and children. Earthjustice and others have been pushing for bans at the state level because, despite overwhelming evidence of its harm, the Trump administration has delayed outlawing chlorpyrifos at the federal level. In New York, the state legislature approved a bill that prohibits the use of chlorpyrifos in agriculture and is now awaiting Governor Andrew Cuomo's signature.






DEFYING EXTINCTION

This summer, the Trump administration issued a new set of regulations that attempt to dramatically weaken the Endangered Species Act, a bedrock environmental law that has protected countless imperiled species of wildlife and plants for more than four decades. Earthjustice, on behalf of seven national conservation groups, filed a lawsuit challenging these regulations for violating the spirit and letter of the law. Seventeen states have joined us in a companion case. In the midst of what has been called our sixth extinction crisis, Earthjustice will continue to fight any attempt to roll back this important law.

SCIENCE ON TRIAL

At Trump's EPA, many independent scientists have been replaced by consultants for polluters on key advisory committees, according to a recent report by Congress's nonpartisan watchdog agency. This disturbing trend began after former EPA Administrator Scott Pruitt instituted a policy that bars anyone who receives an EPA grant – in other words, many of the scientists and medical professionals who work in the public interest – from advising the agency. Earthjustice recently filed a brief in the D.C. Circuit Court of Appeals to challenge this policy and ensure that independent doctors and scientists will still be able to speak up for scientific integrity.

– *Emilie Karrick Surrusco*



MAKE A TRIBUTE OR MEMORIAL GIFT

CELEBRATE A LOVED ONE with a gift in their honor or memory. You may send a beautiful e-card to let the honoree or family know of your kind donation, or we will mail them a lovely card. For more information or to make your gift, visit earthjustice.org/tribute or call (800) 584-6460.



EARTHJUSTICE

HOW NEONICS HARM HONEYBEES

The pesticide sulfoxaflor kills bees in droves, yet the Trump administration has moved to put it back on the market. Represented by Earthjustice, beekeepers are challenging that decision in court. Here's what happens when bees are exposed to neonicotoid pesticides like sulfoxaflor:

ILLNESS AND DEATH

Neonics make it hard for bees to groom themselves, making them susceptible to disease and mites and weakening their immune systems.



LOST AND CONFUSED

Neonics affect bees' ability to navigate back to the hive. Unable to find their way home, they die. Worker bees supply the colony's food. If they don't come back, the entire colony can starve.



COLONY CONTAMINATION

If bees are able to return to the hive, they return covered in pollen contaminated with neonics. As other bees store the pollen, they all become contaminated.





The story of the Everglades is one of humankind's audacious attempts to control nature – and Earthjustice's fight to restore what poet Campbell McGrath calls the "kingdom of otter, kingfisher, alligator, heron."

It began in the late 1800s, when the greater Everglades system still spanned nearly 11,000 square miles, and water still flowed from Kissimmee River down to Lake Okeechobee, trickling over the lake's forested shore to meander south through the Everglades' marshlands and into Florida Bay. A Pennsylvania industrialist decided that

this quiet expanse of sawgrass marsh and mangrove forests must be drained and cultivated, and the state of Florida sold 4 million acres to him for 25 cents an acre. Fast-forward 100 years, and the Everglades' hydrology had been permanently altered by a massive engineering project, with over 1,000 miles of canals and 720 miles of levees. All this to create farmland largely for sugarcane.

With the sugarcane came massive amounts of fertilizer that wreaked havoc on the Everglades' ecosystem and the alligators,



Chris Johns / National Geographic Creative

crocodiles, critically endangered Florida panthers, and 400 species of birds that depend on it – as well as the Miccosukee Tribe of Indians and the Seminole Tribe that have coexisted with the land for generations. In 1988, after everything had been diked, drained, and polluted, the United States government, the Miccosukee Tribe, and Earthjustice went to court to cede back control of the Everglades to nature.

The resulting settlement and its enforcement established 60,000 acres of engineered marshes that filter pollution out of the

water before it reaches the Everglades and required farmers to minimize fertilizer runoff. Despite Florida's repeated attempts to overturn the agreement, Earthjustice has continued to fight and win for nature. In 2019, a federal judge rejected the state's request to shirk the cleanup.

Earthjustice will keep watch over the Everglades until clean water once again flows south through the sawgrass prairie, and the sky is filled with the wings of egrets (pictured), herons, and white ibises gliding home. 🐦

– Emilie Karrick Surrusco



COUNTER PUNCH

Earthjustice attorney David Henkin defends clean water at the Supreme Court.

By Jessica A. Knoblauch



Earthjustice attorney David Henkin stands before the steps of the Supreme Court. He traveled there from Hawaii to argue a clean-water case with sweeping national implications. *Melissa Lyttle for Earthjustice*



Henkin preps for his Supreme Court appearance. Chris Jordan-Bloch / Earthjustice

THIRTY MINUTES. David Henkin knew that was all he would get to make his case. But he felt ready.

On the morning of November 6, the Honolulu-based Earthjustice attorney swapped his customary Hawaiian shirt and khaki pants for a new, tailored suit and blue tie. He was headed to the U.S. Supreme Court, where he would argue a case whose implications stretch far beyond Hawai'i's sandy shores.

The case, formally named *County of Maui v. Hawai'i Wildlife Fund*, involves a wastewater treatment plant, its pollution discharges, and a partially dead coral reef in Maui. How the Supreme Court ultimately decides the case will determine whether water across America remains protected from pollution.

Each year, thousands of swimsuit-clad tourists flock to Kahekili Beach Park, where they snorkel in the clear, turquoise waters for the chance to swim alongside sea turtles and tropical reef fish and spot sea stars, sea urchins, and coral all colors of the rainbow.

But bubbling up beneath Kahekili's famous reef is a dirty secret.

In 1982, the county of Maui's wastewater treatment facility began discharging treated sewage into groundwater that makes its way into Kahekili's waters and the wider Pacific Ocean. Though treated, the wastewater contains dangerous levels of phosphorus and nitrogen, which promote excessive algae growth that smothers the reef, turning its vibrant colors to a dull, lifeless brown.



Wastewater has damaged this coral reef at Kahekili Beach Park. Photo Courtesy of Marley Rutkowski

For years, Maui community groups complained to officials about the wastewater discharges and damage to the reef. Several studies backed up their concerns, including a 2011 study showing conclusively that the sewage flows end up in the ocean, and a 2017 study linking the sewage discharge to serious and ongoing harm to Kahekili's reef.

Still, the county did nothing.

Though it admits the pollution reaches the ocean, the mayor's office argues it's not legally required to do anything about it because the pollution doesn't flow directly into the ocean, but reaches the ocean indirectly through groundwater. The Clean Water Act, it argues, only covers direct discharges.

"According to Maui County, a polluter can avoid the law by taking a pipeline that discharges waste directly into the ocean and cutting it 10 feet short of the shoreline," says Henkin, who sued the county on behalf of four Maui community groups in 2012. "At the end of the day, waste from the pipeline is still polluting the water.

And, under the county's twisted logic, the polluter would get off scot-free."

In 2014 and again in 2018, the courts rejected the county's argument. The Ninth Circuit Court of Appeals said accepting it would "make a mockery" of the Clean Water Act, which seeks to protect our nation's oceans, lakes, and rivers by regulating pollution.

After the rulings, Earthjustice and its clients tried to convince the county to fix the problem rather than pay millions of dollars in legal penalties for breaking the law. There even existed a straightforward solution: Use the excess wastewater for irrigation, a potential boon for dry West Maui.

Nearly 16,000 residents petitioned the local government to settle, and the county council even voted to do so. But the mayor declined to sign off and the case proceeded to the Supreme Court.

The high court agreed to review the county's case in February. A who's who of dangerous polluters, including fossil fuel and industrial agriculture groups, quickly signed on to back the county and its dangerous position. The U.S. EPA under President Trump has also sided with the county, reversing four decades of agency guidance, under both Republican and Democratic administrations, that determined that the Clean Water Act regulates discharges of pollution that reach our nation's waters through groundwater.

The groups backing Maui County's position want to create a loophole in the Clean Water Act, allowing dirty industries to pollute U.S. waters as long as the pollution isn't directly discharged into a water source.

It would be a free-for-all for dangerous polluters.

With nearly 30 years of litigation experience,

Henkin is no stranger to high-stakes cases. During his time at Earthjustice, he's successfully sued the U.S. Army and forced the Navy to limit training exercises that harm whales; secured a rare temporary restraining order against a logging company intent on chopping down the habitat of the critically endangered Hawaiian crow; and set critical legal precedent designating habitat for plants found only in Hawai'i.

"David is a bulldog in the courtroom," says Paul Achitoff, a former Earthjustice managing attorney. "He's exceptional at oral arguments and one of our best courtroom advocates."

**"Under the
county's
twisted logic,
the polluter
would get off
scot-free."**

Henkin's colleagues often cite his passion for community-based lawyering as an immense asset in the courtroom.

But Henkin didn't always know he wanted to be a public-interest lawyer. In the late '80s, the summer before Henkin started law school, he got a job at a New York law firm that was gearing up for a big antitrust trial. The firm needed lots of college-educated people, no background or experience required.

It was a cushy atmosphere.

Every morning, someone came by with a big cart piled with pastries and bagels, and every afternoon they brought lunch. If the employees stayed after 8 p.m., the firm would pay for their dinner and cab ride home.

"All the paralegals would stay until dinnertime. Then we'd go out on the town, and at 2 a.m. we'd grab a cab back to Brooklyn," says Henkin. "It was a fun time."

Eventually, the case settled favorably for the client and firm. As the champagne flowed, Henkin could see the associates envisioning their

pathways to partnership opening up. He was happy for them. But he felt no emotional connection to the work.

"I had a profound indifference about what we were doing," says Henkin. "I wanted to have something that I felt passionately engaged about."

After graduating law school, Henkin got the chance to work in Earthjustice's Honolulu office, which focuses on cases that center people's relationship to the environment.

Almost immediately, Henkin began working with local and Native Hawaiian communities struggling with environmental issues. One evening while he was still jetlagged, Henkin and Earthjustice's Achitoff drove out to O'ahu's Windward side – the island's east coast, famous for its jagged emerald mountains – to meet with residents who were working to restore streams diverted by sugar plantations.

"We were driving in the dark, winding into the jungle," says Henkin. "It was very disorienting. But then I got to this wonderful community meeting with these great people who are trying to do great things."

Working closely with communities in Hawai'i keeps Henkin (second from right) inspired and engaged.
Photo Courtesy of David Henkin





Henkin has fought to protect critical habitat for Hawaiian plants and animals. Photo Courtesy of David Henkin

“Very quickly I was just super captivated by the work, by the clients, by the spirit in the office,” says Henkin. “I thought, ‘I could be a zealous advocate for this.’”

Of the 30 minutes a lawyer gets in front of the Supreme Court, the first two are uninterrupted. Then, a white light flashes and the justices let loose with a barrage of questions.

To prepare, Henkin undertook several practice runs, called “moots,” in front of seasoned lawyers and Supreme Court litigators acting as justices.

In the moots, the “justices” interrupted Henkin mid-sentence. They peppered him with questions designed to poke holes in his argument, mimicking the judicial philosophies of some of the real Supreme Court justices.

After one moot, the acting justices advised Henkin to tighten up his arguments and pack his answers into digestible chunks. They also praised his ability to keep a slow and steady pace, a skill he’s learned after nearly 25 years living in a low-key place like Hawai‘i.

“I really like having a conversation with the judges,” Henkin says. “I like

the back and forth. I think that’s when I’m at my best.”

In the months leading up to the hearing, Henkin would wake up thinking about how many more days were left before he appeared in the Supreme Court.

“By the night before the argument, I felt I had done everything I could do to prepare, and I was relaxed,” Henkin says. “The thing to do was to be fully present.”

The morning’s hearing began with the call of “Oyez! Oyez! Oyez!” from the Marshall of the Court. A crowd of 200 people rose as nine justices in black robes emerged from behind red-velvet curtains like the opening act of a play.

Up first was opposing counsel.

Debate quickly circled around the definition of the word “from.” The Clean Water Act requires polluters to get a permit if they are responsible for “any addition of any pollutant to navigable waters from any point source.”

The Trump administration’s lawyer argued that the pollution off Maui’s coast came directly “from” the

groundwater, not the sewage treatment facility. He offered a folksy analogy:

“If at my home I pour whiskey from a bottle into a flask and then I bring the flask to a party at a different location and I pour whiskey into the punch bowl there, nobody would say that I had added whiskey to the punch from the bottle.”

In this telling, “from” in the statute refers to how pollution (the whiskey) reaches the navigable waters (the punch bowl), and the answer is the flask (groundwater, not Maui’s sewage system).

Then it was Henkin’s turn.

Under intense questioning from the justices, Henkin pivoted back to the analogy.

“Congress was trying to prohibit whiskey in punch,” Henkin started, cutting through the tension in the courtroom by drawing supportive laughs.

“So if all of a sudden you tasted the punch and you said, ‘This tastes like whiskey,’ you’d say, ‘Where did that



After the hearing ended, Henkin said he was happy he had been able to present what he thought was a strong case.
Melissa Lyttle for Earthjustice



Giving Lei

When Henkin walked down the Supreme Court steps, he received a lei from the West Maui Preservation

Association (WMPA).

In Native Hawaiian culture, lei are garlands that mark important occasions, sometimes congratulatory, sometimes formal.

“The use of lei, especially in ceremonial contexts, reflects the Native Hawaiians’ relationship with our natural counterparts – the environment – and with the Hawaiian language. These things work together to present a product,” says U’ilani Tanigawa Lum, the vice president of WMPA.

Lum draws from her own garden to make lei, including kupukupu fern and ti leaf, which symbolize growth and protection.

Henkin’s lei was made from maile, a native forest vine, and kukuna-o-ka-lā, the flower of the African black mangrove introduced to Hawai’i at the start of the American period, says Lance Collins, general counsel of WMPA. The two plants together represent the connection between forest and ocean, and native and introduced.



come from?” You wouldn’t point to [the flask], you’d say it came from the whiskey bottle. That’s how we know it’s whiskey.”

The whiskey in this case, he continued, is the pollution coming from Maui’s sewage system that is pumping 3 to 5 million gallons per day into the ocean.

Later, the punch bowl exchange would become the centerpiece of media accounts.

After the hearing concluded, at a gathering of friends and family back at Henkin’s rental apartment,

champagne flowed as it had decades ago with the antitrust case that began his career. This time, though, Henkin felt deep satisfaction from strongly defending the clean water of millions of Americans, including Earthjustice’s Maui clients.

“I was happy that I was able to present what I thought was a strong case to the court,” Henkin says. “You can never predict the outcome, but whatever outcome we get, I can hold my head high.”

The Supreme Court’s decision should come sometime in the next few months. 🙏



The legal team fighting to defend the Clean Water Act in *County of Maui v. Hawai'i Wildlife Fund* stands on the steps of the Supreme Court after oral arguments. Mariana Bellot-Flores / Earthjustice

THE FUTURE OF AMERICAN



Residents of Fort Myers, Florida, waded through flooded neighborhoods after Hurricane Irma in September 2017.
Spencer Platt / Getty Images



FLORIDA'S CLIMATE FIGHT

**FLORIDA IS A WINDOW ONTO THE
NEW REALITY OF CLIMATE CHANGE.**

BY ALISON CAGLE

In the United States, one need look no further than Florida to see how climate change will transform society. Stricken by erratic hurricanes, unseasonable heat, and sea-level rise, Florida is America's window into what our climate future could be.

Across the state, the importance of climate justice is becoming ever more apparent. Climate justice is the concept that communities at the forefront of climate change must be at the forefront of climate solutions. From agricultural fields to coastal cities, Floridians are uniting to prepare for a changing environment and to work toward a clean energy future, even as state officials drag their feet.

Earthjustice is helping the people who are fighting for our shared future make their voices heard in the halls of power. The sweeping measures we need to combat climate change must be driven by community leadership. Local communities, through their trials, triumphs, and ingenuity in the face of change, know best how to care for their environment – and offer insight into ways the country can prepare for the challenges ahead.

In 2017, the most powerful Atlantic storm in history hit Florida.

Hurricane Irma unleashed 110-mile-per-hour winds and left 12 million people without power. With little time to evacuate, 77,000 people around Florida crammed into emergency shelters. Over three hellish days, Irma wreaked havoc with storms and wind, costing the state \$50 billion in damage.

Down in the majority African-American neighborhood of Dunbar in Fort

Myers, where Crystal Johnson lives, residents prepared for the worst. In the week before Irma hit, there were no shelters designated near Dunbar, so residents were forced to

“Even though it was a devastating time, it was also something that brought the community together.”

evacuate through packed roadways or barricade themselves inside their homes.

“I recall a video of a guy in a canoe floating through a nearby public housing complex,” says Johnson.

“Some suffered really bad. Homes without weather-stripping got flooded, some got bedbugs after the storm. [The residents] couldn’t pay for care, but why should they, when this is a public housing development?”

Irma flooded Dunbar’s streets and knocked out power for 12 straight days. Once the 15-foot storm surge receded, Dunbar residents made their way to the STARS Complex, a well-known local community





Fort Myers resident Crystal Johnson set up a makeshift emergency center in Irma's wake after the government failed to provide adequate aid to her neighborhood. *Martin do Nascimento / Earthjustice*

center. Situated on a main street and surrounded by solar panels, the center is a community hub that hosts sporting events, after-school programs, and monthly meetings for various local groups. The people of Dunbar expected the center to be open after the storm to distribute emergency aid.

Instead, they found locked doors.

"This *should* have been a respite site after the storm, where we could come and recharge, cool off, share food, connect with people," says Johnson. "It was really disheartening."

In the absence of government aid, Johnson stepped in to get Dunbar back on its feet. She set up a makeshift command center in front of STARS' locked doors, organizing the distribution of cooked food by local

church members and her local city councilwoman, Terolyn Watson. Using social media as her bullhorn, Johnson shared emergency updates that she received from her state representative, Heather Fitzenhagen, including locations of where people could get food, water, and other supplies. As word of mouth spread, residents started showing up to lend a hand. Whatever help somebody could lend, Johnson accepted.

"We took care of each other," she says. "Even though it was a devastating time, it was also something that brought the community together."

Though the aftermath of the storm fostered unity among Dunbar's residents, it also highlighted another sensitive aspect of emergency aid: the culture clash that can occur when separated groups are

Floridians who want to invest in community solar are blocked by a small group of utility companies that monopolize the state's power.

forced into a small, stressful space. Residents who arrived at a hastily erected shelter inside the local high school found it to be poorly planned, lacking in supplies and personnel. In other shelters outside the city, low-income residents recalled being met with ugly racial and class tensions.

"It's culture shock to some people," says Johnson. "People at the shelter looking at us and saying they didn't want us there. The things I heard, it was just...wow."

Johnson is on a mission to ensure that her community is better

equipped for the next storm. She has traveled to the state capital, Tallahassee, to advocate for the creation of "resiliency hubs": one-stop locations where residents could receive service updates, pick up emergency supplies, and access backup power.

A logical way to provide that backup power would be batteries powered by a community solar project. In this low-cost model for generating clean energy, communally owned solar panels generate electricity that all the project's participants can use. Community solar promotes resiliency, because energy that is produced by a small, local grid is easy to store for later use.

Yet Floridians who want to invest in community solar are blocked by a small group of utility companies that monopolize the state's power. Monolithic companies like Duke Energy and Florida Power and Light have repeatedly stymied incentives for people adopting solar energy by ending rebates for rooftop solar

Crystal Johnson walks with Earthjustice Senior Legislative Representative Luis Torres in Fort Myers. Martin do Nascimento / Earthjustice



installation or undercutting the savings of homeowners who overproduce solar energy. Earthjustice is currently representing local community groups in Florida who are fighting to access solar energy as a low cost, clean alternative to Florida's dependence on dirty fuels.

Florida's reluctance to boost clean energy is reflected in its utilities' race to build gas-fired power plants, which would lock Florida into carbon emissions for decades. Despite state laws that require energy companies to meet efficiency goals and increase rooftop solar access, Florida's Public Services Commission often allows utility companies to dodge compliance. The state is ranked 45th in its energy-efficiency standards – yet this year, the PSC proposed lowering its efficiency goals to zero. Earthjustice and local partners successfully advocated for the PSC to reject that outrageous bid, but the state still has a long way to go in creating robust efficiency goals that advance clean energy and lower residents' utility bills.

This isn't the only way Florida's leaders are failing to address the realities of the climate crisis. Former Governor Rick Scott (R) rolled back many of Florida's regulations for fossil fuel-generating companies. Until his term ended in 2019, even the words "climate change" were barred from policy discussions.

Whether or not state officials will speak the phrase, climate change is a deadly reality in the fern capital of the world. On a 95-degree day in Pierson, a town of fewer than 2,000 residents in Central Florida, farmworkers sweat as they harvest soft, leathery plants that are destined to grace corporate offices.

"I feel like I'm drowning," says Griselda Lomeli, a worker at the nursery. "I'm suffocating. My heart beats very quickly, and I can hear it, accelerating."

Longer and more intense summers have created a new kind of labor crisis, as heat stress threatens the lives of farmworkers risking heat stroke and even death on the job.

(Continued on page 28)

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“Heat stress” is an innocuous-sounding name for an agonizing physiological attack. When temperatures outside increase faster than a person’s body can regulate them, the body’s heart rate spikes and internal organs become affected. This can lead to acute headaches, cramps, nausea, dizziness, and other uncomfortable symptoms that are exacerbated when performing increased physical activity. Unless a person immediately takes shelter in the shade, cools down, and hydrates, the body’s core temperature will continue increasing, leading to heat stroke. Many outdoor workers face chronic dehydration, which can lead to kidney failure.

At the fernery in Pierson, where farmworkers are paid by how much they can produce in a day, any worker can describe the agony of heat stress, and the fear that pausing will jeopardize their daily quota.

“When I feel heat stress,” says Nicandra Gomez, “I feel very desperate. I only stop for a moment to get something to drink. But [stopping] delays my production and hinders me from getting a good wage.”

The Centers for Disease Control and Prevention recommends that employers limit farmworkers to working only an hour and a half on a very hot day, and increase that time by no more than 20% each day, in order to safely acclimate workers’ bodies to the punishing environment. But a bunch of ferns yields only 30 cents per barrel, and missing a day’s quota can reduce an already low paycheck.

Faced with this untenable situation, farmworkers are uniting to agitate for better conditions. Antonia Aguirre began working at the ferneries when she was 14, but quit after a decade of seeing little increase in her wages. Now, as an organizer for the Farmworker Association of Florida, she advocates on behalf of workers seeking medical help and government aid, and educates farmworkers on recognizing signs of heat stress.

State-level policies that protect farmworkers from the rising heat are a key demand of Aguirre and the Farmworker Association of Florida’s other 10,000 members. This year, in coordination with the Farmworker Association, Orlando legislators Senator Victor Torres (D) and Representative Carlos Guillermo Smith (D) introduced bills that would require both employer and employee training on how to recognize and treat heat stress. The bill also requires employers to provide outdoor laborers with water, breaks, and protection from the sun.

“The industry isn’t prepared to handle climate change,” says Aguirre. “When [farmworkers] are in the fields, of course they’re working long hours – sometimes checks are only \$80 a week. You can’t stop.



(Clockwise from left) **Farmworker Jesus Estrada picks ferns on a 95-degree day in Pierson, Florida; Antonia Aguirre is organizing Floridian farmworkers to advocate for safer labor conditions. Rising temperatures put the workers at risk of heat stress, which can be deadly; Griselda Lomeli wraps one bunch of ferns by hand in Pierson.**
Martin do Nascimento / Earthjustice



Employers need to give workers at least a paid hour when they have to rest. The temperatures have gotten too hot.”

In low-lying Florida, sunny weather no longer guarantees dry ground.

When the sun and the moon align with Earth in between, their gravitational tug-of-war creates extreme tides called “king tides” on Earth. King tides are a natural occurrence. But rising sea levels have drastically elevated Florida’s water table, so that during king tides, water gurgles out of the storm drains and into people’s homes. It can also pour over 5-foot-high seawalls into the streets.

Sea-level rise is Florida’s biggest economic and infrastructural threat. Yet cities like Miami, which has seen a threefold increase in flooding in only two decades, must find a way to make their

infrastructure more resilient to climate change without sacrificing the beachside ambiance that draws people there.

“We don’t want residents to disconnect from our greatest asset, the ocean,” says Margarita Kruffy, the assistant director of environment and sustainability for Miami Beach.

The pace of adaptation also faces practical limitations, such as the intended lifespan of city infrastructure. “A road is typically rebuilt every 20 years, so we raise roads high enough to be protected during that specific period,” she says. “It’s not fiscally responsible otherwise — plus, you would be killing the character of the city.”

To navigate these challenges, local governments have combined forces. This summer, Miami, Miami Beach,

“This is like a Band-Aid on a highly severe injury. It’s a matter of using a number of different strategies to help us with the challenges that we’re facing, now and in the future.”

and Miami-Dade County announced a comprehensive climate plan called the Resilient305 Strategy. The plan calls for the cities and county to work together on projects that transcend municipal borders, such as coral reef restoration and improving aging infrastructure. It promotes climate justice by providing for affordable housing programs and groups who are disproportionately affected by weather events, like homeless populations.

Though collaborating gives municipalities more power to address the climate crisis, Kruyff acknowledges that more sweeping fixes are still needed.

“This is like a Band-Aid on a highly severe injury,” she says.



“It’s a matter of using a number of different strategies to help us with the challenges that we’re facing, now and in the future.”

To enact solutions that match the scope of the problem, communities may ultimately need buy-in from state leaders. And with Floridians united in demanding climate action, state leaders are finally beginning to come around. In August, Gov. Ron DeSantis (R) appointed Florida’s first chief resilience officer, whose job is to prepare Florida for the environmental, physical, and economic impacts of sea-level rise. Some legislators have introduced bills aimed at encouraging energy conservation and leveling the playing field for renewable energy, and the state’s agricultural commissioner is

leading a campaign to increase grants for climate impact research.

But when it comes to broader policies that would promote clean energy or increase energy-efficiency standards, the state continues to take steps backward. Earthjustice is working in partnership with frontline communities to push Florida’s leaders toward bolder action.

“The road to zero emissions and 100% clean energy in Florida runs through Tallahassee,” says Luis Torres, a Senior Legislative Representative at Earthjustice who works to advance affordable, equitable clean energy solutions. “We are doing everything we can to make that a reality.”

Earthjustice’s Torres is supporting Johnson’s push for creating climate resiliency hubs in her community. Earthjustice is also advocating potential bills slated for the coming 2020 Florida legislative session that push for community solar as a path to building climate resilience. This year, Johnson also joined the Earthjustice team as a guest partner at the University of California, Los Angeles, 100% clean energy summit, where advocates from across the country strategized on efforts to move states toward 100% clean energy. “A key aspect of this work will involve continuing to partner with frontline communities most affected by the negative impacts of climate change, to ensure that their voices are front and center,” says Torres.

While she waits for legislators to take action, Johnson isn’t sitting idle. Since the hurricane, she has worked with emergency-preparedness groups to teach the community disaster-relief skills, and she has received a grant to distribute free emergency packs throughout Dunbar. She also coordinates after-school sessions at STARS that train students to do basic emergency medical procedures.

“This is a resourceful community,” says Johnson. “We do whatever we have to do to make it, because we’re used to going without.” 🗣️



A driver navigates through floodwater caused by a seasonal king tide in Hollywood, Florida. Lynne Sladky / AP

AUSTIN NUÑEZ

Chairman of the Tohono O'odham Nation's San Xavier District, Tucson, Arizona

Indigenous people have worshipped, foraged, and laid their ancestors to rest in Arizona's Santa Rita Mountains for thousands of years. On this same land, mining corporation Hudbay Minerals proposed digging a mile-wide open-pit copper mine dubbed Rosemont, burying dozens of sites sacred to Native people under 1.8 billion tons of toxic waste.

This year, the Tohono O'odham Nation, the Hopi Tribe, and the Pascua Yaqui Tribe, represented by Earthjustice, won a critical court fight to block the Rosemont mine. A judge ruled in favor of the three Tribes, in a masterpiece decision that halted the mine in its tracks and directed the U.S. Forest Service to protect these public lands from Rosemont's devastating impacts.

Austin G. Nuñez is chairman of the Tohono O'odham Nation's San Xavier District, which houses the sacred land in the Santa Rita Mountains. Nuñez speaks about the fight for his tribe's spiritual home.



Apologizing to Ancestors

Our relationship to the land is first and foremost. When our Hohokam ancestors laid their loved ones in their final resting place, they never envisioned having them disturbed. We very much attempt to honor that, when remains are discovered. Since the Native American Graves Protection and Repatriation Act passed in 1990, we've been able to retrieve our ancestors' remains from museums and return them home for proper burial.

We still feel our ancestors' spirits today. When their remains have to be returned to us, we pray to them, apologize, and reassure them that we're going to make every effort to give them a final resting place. That's what is healing to us.

A Place Where Children Don't Fight

These were our ancestral lands. We continue to go to the sacred places to

offer prayer and hold gatherings or overnight visitations. We'll go and collect yucca, wild onion, plants for medicinal purposes, or bear grass for basket making. We go just to enjoy the area.

When our children were younger, we'd take them to the desert to be with nature. It's amazing. When they were out there, the children wouldn't fight. They'd enjoy it. It's so peaceful.

"If There's Some Way to Stop the Mine, We'll Do It"

The tribes' decision to challenge Rosemont together was based on previous joint efforts to defend our common needs. When a site with remains is discovered, a developer will send out letters to the affected tribes, and we'll have input into the process. We make sure the developers follow the proper techniques for being respectful in how they treat the remains, or for giving them back to the tribes.

Austin Nuñez, chairman of the San Xavier District, Tohono O'odham Nation, stands before the Santa Rita Mountains.
Mamta Popat for Earthjustice

Just the thought of replacing our ancestral lands, destroying Mother Earth, and having a big, gaping hole there – that would forever destroy the spirit of the land. The pollution that would come to the land and water means that it would never be the same again.

In our minds, if there's some way to stop the mine, we'll do it. We prayed that that mine would never be built.

A Stunning Victory

We were so relieved and happy! It was hard to believe. I took my family back to the sacred springs to celebrate – right now, all the plants and animals are enjoying the blessings of the rain. I was overwhelmed with joy, and in my prayer, I offer thanks to the Creator that our prayers were answered.

But we realize we only won the battle, not the war. Next year, we may have to revisit everything again. So I continue to pray that the mine will never happen.

Hope in the System

The judge's ruling shows that there is hope in the system. There are good people who believe in the sovereignty of Native nations, and their fundamental, inherent right to land and water. It has reinforced our vow to protect and enhance the lands we do have.

It also reinforces the need to remember that we, as humans, are not in control. We are part of nature. Nature is part of us. We're all connected, so we have to make every effort to protect the water, the land, plant life, and animal life. That's what's always been taught to us, from the very beginning. Technology and economic advancement cannot come at the cost of destroying our natural resources. So it is very important to continue defending our lands, because we pray for our future generations that are still yet to come, as we know our ancestors did for us. 🙏

– Alison Cagle

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As a member of the United Houma Nation in Louisiana, Bruce Duthu has seen firsthand how coastal communities are already grappling with the impacts of climate change.

He donates annually to Earthjustice because he knows the organization uses the power of the law to fight for the people and communities hardest hit by extractive industries and the climate crisis. Since 2001, he has also served on Earthjustice's Board of Trustees.

"They've really broadened the meaning of environmental activism," says Duthu, who is Samson Occom Professor of Native American Studies at Dartmouth College and a nationally recognized expert on Native American law and public policy. "The scope of the work has become so much more inclusive. It includes not just the protection of wild spaces and species, but also communities, ensuring people have water that's safe to drink, air that's safe to breathe – the conditions where people can live healthy lives."

Duthu shares his passion for Earthjustice with his students, encouraging many of them to become involved with the organization. He is proud that a few have even become Earthjustice attorneys.



Bruce Duthu is a professor of Native American Studies at Dartmouth College, and a member of the Houma Nation.
Joe Mehling / Dartmouth College

He worries about the world that his students, and his three grandchildren, will inherit.

"This work is dire, it's urgent, it's important," he says. "I sleep well at night knowing that I'm supporting the best environmental advocates in the world. If you want a future for your children and your grandchildren, you should support Earthjustice."

"This work is dire, it's urgent, it's important. I sleep well at night knowing that I'm supporting the best environmental advocates in the world."

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